

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LINDA PEDRAZA and FRANCISCO  
PEDRAZA, individually and on  
behalf of their son MICHAEL  
PEDRAZA,

No C 05-04977 VRW

Plaintiffs,

v

ALAMEDA UNIFIED SCHOOL DISTRICT  
and THE CALIFORNIA DEPARTMENT OF  
EDUCATION, THE ALAMEDA BOARD OF  
EDUCATION, ALAN NISHINO,  
individually and as  
Superintendent of the Alameda  
Unified School District, ARDELLA  
DAILEY, as superintendent of the  
Alameda Unified School District,  
DAVID WAX, individually and as  
Special Education Director of the  
Alameda Unified School District,  
CALIFORNIA DEPARTMENT OF  
EDUCATION and JACK O'CONNELL, as  
State Superintendent of Public  
Instruction for the State of  
California,

ORDER

Defendants.

On February 23, 2006, plaintiffs Linda and Francisco  
Pedraza, individually and on behalf of their son Michael Pedraza,  
filed a first amended complaint (Doc #10) against various  
defendants for violations of the Individuals with Disabilities in  
Education Act (IDEA), 20 USC §§ 1400, et seq; the Rehabilitation

1 Act of 1973, 20 USC § 794; 42 USC § 1983; and for breach of  
2 contract.

3 Defendants are the Alameda Unified School District  
4 (AUSD); the AUSD Board of Education; Alan Nishino, individually and  
5 as former AUSD Superintendent; Ardella Dailey, individually and as  
6 current AUSD Superintendent; David Wax, individually and as former  
7 AUSD Special Education Director; Theresa Anderberg, individually  
8 and as current AUSD Special Education Director (local defendants);  
9 the California Department of Education (CDE); and Jack O'Connell,  
10 individually and as State Superintendent for Public Instruction  
11 (state defendants).

12 Both local and state defendants have filed separate Rule  
13 12 motions to dismiss all claims against them for lack of subject  
14 matter jurisdiction and, in the alternative, for failure to state a  
15 claim upon which relief can be granted. Doc ##20, 29.

16 The court has heard oral arguments and reviewed memoranda  
17 from both sides. For the reasons stated herein, defendants'  
18 motions to dismiss plaintiffs' first claim for violation of the  
19 IDEA, third claim for violation of the Rehabilitation Act of 1973,  
20 fifth claim for violation of § 1983 predicated upon a violation of  
21 the due process clause of the 14th Amendment and sixth claim for  
22 breach of contract are DENIED; defendants' motions to dismiss  
23 plaintiffs' second and fourth causes of action for violation of  
24 § 1983 are GRANTED. Local defendants' motion to dismiss the  
25 individual defendants in their official capacities and the AUSD  
26 board is DENIED. Defendants' motions to dismiss plaintiffs' claim  
27 for monetary damages under the IDEA and for punitive damages under  
28 § 504 of the Rehabilitation Act are GRANTED.

I

Michael Pedraza was born on October 25, 1999 and later diagnosed with autism. Doc #10, ¶ 5. Michael's autism makes him eligible for a free appropriate public education (FAPE) under the IDEA. Doc #10, ¶¶ 5, 19; 20 USC § 1401(3)(A). As a resident of Alameda County, California, Michael is entitled to receive a FAPE from the AUSD. Doc #10, ¶ 5.

The IDEA requires a team comprised of the student's parents and AUSD employees (including teachers and administrators) to meet and develop an individualized education program (IEP) for each school year. 20 USC § 1414(d); see Cal Educ Code § 56340. An IEP summarizes the special education and related services which will make up the student's FAPE. Id.

In October 2002, plaintiffs participated in an IEP meeting for the 2003-2004 school year (the only year at issue in this proceeding) at which time the AUSD outlined its proposal for Michael's FAPE. Doc #10, ¶ 19. Plaintiffs disagreed with the AUSD's proposal and requested a second IEP meeting. Id.

While it is unclear from the record whether a second IEP meeting took place, plaintiffs retained counsel in July 2003 and initiated a due process proceeding to resolve issues relating to the AUSD's offer of FAPE for the 2003-2004 school year. Doc #10, ¶¶ 19-20; see also Michael Pedraza v Alameda Unified Sch Dist, SN03-01426. Before the hearing took place, plaintiffs and the AUSD agreed to mediate and subsequently entered into a "compromise and release agreement" purporting to resolve the issues raised in the due process complaint. Doc #10, ¶ 21, Ex 2 at 5.

1 Specifically, the AUSD agreed to provide clinical therapy  
2 and speech programs and to reimburse plaintiffs for Michael's pre-  
3 school placement, the costs of a paraprofessional aide and for  
4 occupational therapy services. Doc #10, Ex 2 at 1-3. The  
5 agreement also provided that failure to perform any provision would  
6 be considered a breach of the entire agreement whereby "the  
7 breaching party shall forfeit all consideration promised or  
8 received." Doc #10, Ex 2 at 7.

9 The 2003-2004 school year commenced and soon thereafter,  
10 the AUSD breached the agreement by failing to (1) provide "parent  
11 reimbursement for services" and (2) "contract directly with service  
12 providers" to "secure agreed upon related services" for Michael.  
13 Doc #10, ¶ 22. Plaintiffs then filed a complaint with the CDE  
14 setting forth the AUSD's alleged "failure to fulfill its  
15 obligations under the settlement agreement and [the] IDEA." Doc  
16 #10, ¶ 24, Ex 3 at 2. On December 1, 2003, the CDE issued a report  
17 finding the AUSD "in compliance regarding implementation of [the  
18 July 2003] mediation agreement." Doc #10, Ex 3 at 2.

19 Plaintiffs requested reconsideration of the CDE's  
20 findings. Doc #10, ¶ 26, Ex 3 at 1, 6. The CDE granted their  
21 request and on May 10, 2004 issued an amended report, this time  
22 finding the AUSD "out of compliance." Id. The CDE directed the  
23 AUSD to arrange an IEP meeting to evaluate Michael's program and  
24 found that "if dispute resolution and/or mediation [did] not result  
25 in a settlement agreement and appropriate program for [Michael],  
26 the [AUSD] shall ensure FAPE by initiating due process prior to  
27 7/15/04." Doc #10, Ex 3 at 6. An IEP meeting took place, but no  
28 agreement was reached regarding the 2003-2004 dispute, and the AUSD

1 failed to initiate a due process proceeding as required by the  
2 CDE's mandate. Doc #10, ¶¶ 27-28.

3 In November 2004, plaintiffs notified the CDE that the  
4 AUSD remained out of compliance and requested a further  
5 investigation. Doc #10, ¶ 28. In a letter (not addressed to  
6 plaintiffs) dated February 8, 2005, the CDE stated:

7 The file regarding the [Pedraza] case has  
8 been carefully reviewed and completed. As  
9 appropriate, all required corrective actions  
have been received and duly noted. Therefore  
this case is now closed.

10 Doc #32, Ex A.

11 In August 2005, plaintiffs initiated a second due process  
12 hearing alleging, inter alia, that the AUSD denied Michael a FAPE  
13 for the 2003-2004 school year by failing to abide by the settlement  
14 agreement. Doc #10, ¶ 31. In September 2005, the Office of  
15 Administrative Hearings (OAH) dismissed the 2003-2004 claim for  
16 lack of subject matter jurisdiction stating:

17 While petitioner has artfully drafted the due  
18 process complaint to include a denial of FAPE  
19 during the [2003-2004] school year covered by  
the mediated settlement agreement and the CDE  
20 investigation, the theory remains that [the  
AUSD] has violated [the IDEA] by failing to  
live up to [its] obligations under the  
mediated settlement agreement. Violations of  
21 mediated settlement agreements are clearly  
within the purview of CDE. Petitioner has  
22 recourse other than through OAH, including  
filing suit in state or federal court, when a  
23 state agency is not fulfilling its legal  
obligations.

24  
25 Doc #10, ¶ 32, Ex 1 at 2. Subsequently, plaintiffs filed their  
26 original and first amended complaints with this court seeking  
27 injunctive relief and damages for the alleged denial of FAPE for  
28 the 2003-2004 school year. Doc ##1, 10.

## II

Plaintiffs' FAC asserts six causes of action, all arising out of defendants' alleged breach of the IDEA. Doc #10.

Plaintiffs seek damages pursuant to: (1) the IDEA, 20 USC §§ 1400 et seq; (2) 42 USC § 1983 for violation of the IDEA; (3) section 504 of the Rehabilitation Act of 1973, 20 USC § 794; (4) 42 USC § 1983 for violation of section 504 of the Rehabilitation Act; (5) 42 USC § 1983 for violation of the due process clause of the 14th Amendment of the United States Constitution; and (6) breach of contract. Id.

Plaintiffs assert the court has subject matter jurisdiction over their first five claims pursuant to 28 USC § 1331, and supplemental jurisdiction over their sixth claim subject to 20 USC § 1367. Doc #10, ¶¶ 1-2. Defendants argue that this court lacks subject matter jurisdiction because plaintiffs' claims arise out of the settlement agreement mediated under the IDEA and that the IDEA did not provide a right of enforcement in federal court for such agreements until 2005. Doc #23, 6:14-9:6; Doc #30, 5:22-8:8.

In a facial attack on subject matter jurisdiction, "the court considers the allegations in plaintiffs' complaint (together with documents attached to the complaint, judicially noticed facts and any undisputed facts evidenced in the record) in the light most favorable to plaintiff." William W Schwarzer, A Wallace Tashima, and James M Wagstaffe, Federal Civil Procedure Before Trial, 9:78 (Rutter Group, 2006). Because federal courts are those of limited jurisdiction, it is presumed that the court lacks jurisdiction in a particular case "unless the contrary affirmatively appears" in

1 plaintiffs' complaint. Kokkonen v Guardian Life Insurance Co of  
2 America, 511 US 375, 377 (1994); Stock West, Inc v Confederated  
3 Tribes of the Colville Reservation, 873 F 2d 1221, 1225 (9th Cir  
4 1989) (citing California ex rel Younger v Andrus, 608 F 2d 1247,  
5 1249 (9th Cir 1979)).

6 Jurisdiction over several of plaintiffs' claims is  
7 contingent upon the court having jurisdiction over plaintiffs'  
8 cause of action under the IDEA (claim #1). Accordingly, the court  
9 will first address the issue whether plaintiffs have established  
10 federal question jurisdiction over their IDEA claim.

11  
12 A

13 Plaintiffs assert that the court may exercise federal  
14 question jurisdiction over their IDEA claim based on two theories:  
15 (1) defendants violated the IDEA by failing to comply (or in the  
16 case of state defendants, failing to enforce compliance) with the  
17 settlement agreement; and (2) the AUSD's failure to provide the  
18 services and reimbursement agreed upon in the settlement agreement  
19 resulted in a denial of FAPE, which constitutes a violation of the  
20 IDEA. Doc #39, 10:4-12:7. While the court cannot exercise subject  
21 matter jurisdiction based on breach of the settlement agreement, it  
22 may do so based on the alleged violation of the IDEA.

23 The current version of 20 USC § 1415(e), which took  
24 effect on July 1, 2005, provides:

25 In the case that a resolution is reached to  
26 resolve the complaint through the [IDEA's]  
27 mediation process, the parties shall execute  
28 a legally binding agreement that sets forth  
such resolution and that \* \* \* is enforceable  
in any State court of competent jurisdiction  
or in a district court of the United States.

1 20 USC § 1415(e)(2)(F)(iii); Individuals with Disabilities  
2 Education Improvement Act of 2004, Pub L No 108-446. Plaintiffs  
3 argue that, although they entered into the settlement agreement two  
4 years before the effective date of the act, the applicable statute  
5 is retroactive and thus federal question jurisdiction exists. See  
6 Doc #58. In support of this contention, plaintiffs point to CT v  
7 Vacaville Unified Sch Dist, Slip Copy, 2006 WL 2092613 (ED Cal  
8 2006), in which the court found that an alleged breach of a May  
9 2004 mediated settlement agreement conferred federal jurisdiction  
10 under § 1415(e)(2)(F)(iii). In CT, however, the parties failed to  
11 raise and the court did not address the issue of retroactivity.  
12 Thus, even if CT were binding upon this court, it is not applicable  
13 to the issue of retroactivity. Moreover, defendants argue, without  
14 opposition, that nothing in the 2004 amendments "suggests that  
15 courts may retroactively apply any of the amendments, let alone  
16 specific subsections." Doc #30, 6:21-23; Doc #23, 7:14-17.  
17 Because the parties mediated the agreement at issue two years prior  
18 to the effective date of the above statute, the court does not have  
19 jurisdiction to enforce the agreement. For these reasons, federal  
20 jurisdiction cannot be predicated on breach of the 2003 agreement.  
21 Subject matter jurisdiction over the IDEA claim, therefore, rests  
22 solely on plaintiffs' second theory: that a breach of the agreement  
23 constitutes a denial of FAPE and a violation of the IDEA.

24  
25 In the 2003 agreement, the parties "acknowledged that the  
26 services the District agreed to provide constituted a FAPE for the  
27 2003-2004 school year." Doc #40, 10:13-14; Doc #10, Ex 2 at 5.  
28 Plaintiffs argue that when the AUSD failed to provide the services  
outlined in the settlement agreement, it effectively denied Michael



1 a FAPE for that school year. Doc #10, ¶¶ 22, 45. According to  
2 plaintiffs, that denial of a FAPE constitutes a violation of the  
3 IDEA itself, and because defendants violated the IDEA, federal  
4 question jurisdiction exists. Id.

5 Taking plaintiffs' allegations as true, Michael was  
6 indeed denied a FAPE for the 2003-2004 school year, and failure to  
7 provide a FAPE, in any form, constitutes a violation of the IDEA.  
8 20 USC §§ 1400, et seq. Accordingly, the court may exercise  
9 subject matter jurisdiction provided that plaintiffs have either  
10 complied with the IDEA's exhaustion requirement or demonstrated  
11 that doing so would be futile. 20 USC § 1415(1); see also Robb v  
12 Bethel Sch Dist 403, 308 F3d 1047, 1048 (9th Cir 2002); Hoeft v  
13 Tucson Unified Sch Dist, 967 F 2d 1298, 1302 (9th Cir 1992).

14  
15 B

16 The IDEA requires that all of the administrative  
17 procedures set forth in 20 USC § 1415 must be exhausted before  
18 filing a civil action in federal court. 20 USC § 1415(1); see also  
19 Hoeft, 967 F2d at 1302.

20 The IDEA's administrative procedures, detailed in 20 USC  
21 § 1415, begin with the filing of a parental complaint. 20 USC  
22 § 1415(b)(6). Upon receipt of a complaint, the local educational  
23 agency is required to convene an IEP meeting to discuss the issues  
24 and attempt resolution. 20 USC § 1415(f)(1)(B)(i). If the issues  
25 are not resolved, parents may either agree to mediation or initiate  
26 an impartial due process hearing. 20 USC §§ 1415(e), 1415(f)(1)(A)  
27 and (f)(1)(B)(ii). If the parties agree to mediation, they must  
28 enter into a settlement agreement, which as of July 1, 2005, is

1 enforceable in federal court. 20 USC § 1415(e)(2)(F). If the  
2 parties go forward with the due process hearing, the hearing  
3 officer considers the evidence and determines whether the child in  
4 question received a FAPE. 20 USC § 1415(f). If parents are still  
5 aggrieved, they may "bring a civil action \* \* \* in any State court  
6 of competent jurisdiction or in a district court of the United  
7 States, without regard to the amount in controversy." 20 USC §  
8 1415(i).

9           The Ninth Circuit has not yet addressed whether the  
10 IDEA's exhaustion requirement is satisfied when parties enter into  
11 a mediated settlement agreement. The First Circuit, however, has  
12 addressed the issue of what constitutes exhaustion under the IDEA  
13 and found that mediation is insufficient. Weber v Cranston School  
14 Committee, 212 F 3d 41, 53 (1st Cir 2000); accord Tyler B v San  
15 Antonio Elementary School District, 253 F Supp 2d 1111, 1118 (ND  
16 Cal 2003); see also James R Cohen and Peter N Thompson, Disputing  
17 Irony: A Systematic Look at Litigation about Mediation, 11 Harv  
18 Negot L Rev 43, 131 (2006). In the absence of Ninth Circuit  
19 precedent, the court adopts the First Circuit's interpretation of  
20 the IDEA's exhaustion requirement and finds that this requirement  
21 is not satisfied when parties enter into a mediated settlement  
22 agreement. Pursuant to both the IDEA and California state law,  
23 there must be, at the very least, a state-level impartial due  
24 process hearing before the aggrieved party can file a civil action  
25 in federal court. See 20 USC § 1415(i)(2); Cal Educ Code § 56501.

26           Here, the parties agreed to waive the due process hearing  
27 and instead, utilized the IDEA's mediation process. Doc #10, ¶ 21.  
28 While plaintiffs ultimately appealed to the CDE, they did so based

1 on denial of FAPE under the 2003 mediated settlement agreement, not  
2 based on the findings of a due process hearing officer. Doc #10,  
3 Ex 3 at 2. Because plaintiffs agreed to mediation and did not  
4 participate in a due process hearing, plaintiffs have not exhausted  
5 their administrative remedies under the IDEA.

6 Application of the IDEA's exhaustion requirement,  
7 however, is not absolute. Hoeft, 967 F 2d at 1303. The Ninth  
8 Circuit has recognized an exception "based both on general  
9 exhaustion principles and on the legislative history of the IDEA"  
10 and held that where resort to the administrative procedures set  
11 forth in 20 USC § 1415 would be futile or would provide an  
12 inadequate remedy, the exhaustion requirement is excused. *Id.* In  
13 general, futility will be found when resort to further  
14 administrative process would serve no useful purpose (i e, not  
15 serve the policies behind the exhaustion requirement). *Id.*; see  
16 also Jacob A Stein, Glenn A Mitchell, and Basil J Mezines, 5-49  
17 Administrative Law § 49.02 (Matthew Bender 2006). When resort to  
18 further administrative remedies will not serve any useful purpose,  
19 the doctrine of futility excuses the IDEA's exhaustion requirement  
20 and provides federal courts jurisdiction over a plaintiff's  
21 complaint for violation of the IDEA. *Id.*

22 Viewing plaintiffs allegations in the light most  
23 favorable to them, their prior attempts at administrative  
24 resolution provide a near perfect example of futility. After the  
25 AUSD's alleged breach of the settlement agreement, plaintiffs filed  
26 a complaint directly with the CDE. Doc #10, ¶ 24. The CDE  
27 ultimately found the AUSD out of compliance, yet did nothing to  
28 enforce the AUSD's obligations under the agreement. Doc #10, ¶26;

1 Doc #32, Ex A. Plaintiffs cannot file another complaint with the  
2 CDE since it has already deemed the case "closed" and, under 20 USC  
3 § 1415, decisions rendered by a state educational agency are final.

4 Once the CDE deemed the case closed, plaintiffs sought a  
5 due process hearing claiming that the AUSD denied Michael a FAPE,  
6 but the OAH refused to adjudicate plaintiffs' allegations. Doc  
7 #10, ¶¶ 31,32; Doc #10, Ex 1 at 2. Despite plaintiffs' allegation  
8 of denial of a FAPE, and not merely a breach of the 2003 agreement,  
9 the OAH dismissed the claim for lack of subject matter jurisdiction  
10 finding that "[v]iolations of mediated settlement agreements are  
11 clearly within the purview of CDE." Doc #10, Ex 1 at 2.

12 Plaintiffs cannot seek reconsideration of the OAH's denial of  
13 jurisdiction because issues decided by the OAH are considered final  
14 under Cal Educ Code § 56505(h). Moreover, it would be futile to  
15 send plaintiffs back to the CDE since the department has already  
16 issued a final decision and refused to take any action to enforce  
17 the AUSD's compliance with the IDEA.

18 In Hoefl, the Ninth Circuit discussed the policy behind  
19 the IDEA's exhaustion requirement:

20 The policies underlying the IDEA's  
21 administrative procedures reflect both  
22 general principles of administrative law and  
23 the educational philosophy of the IDEA. The  
24 exhaustion doctrine embodies the notion that  
25 agencies, not the courts, ought to have  
26 primary responsibility for the programs that  
27 Congress has charged them to administer.  
28 The IDEA's exhaustion requirement also  
recognizes the traditionally strong state and  
local interest in education, as reflected in  
the statute's emphasis on state and local  
responsibility. \* \* \* Exhaustion of the  
administrative process allows for the  
exercise of discretion and educational  
expertise by state and local agencies,  
affords full exploration of technical  
educational issues, furthers development of a

1 complete factual record, and promotes  
2 judicial efficiency by giving these agencies  
3 the first opportunity to correct shortcomings  
in their educational programs for disabled  
children.

4 967 F2d at 1303 (internal citations and quotations omitted). These  
5 policies cannot be furthered when state administrative agencies  
6 refuse to take action. The state agencies' refusals in this case  
7 are flagrant: the CDE refused to enforce compliance even after  
8 finding the district in breach. And the OAH refused to accept  
9 jurisdiction despite allegations that AUSD denied FAPE to Michael  
10 Pedraza.

11 Requiring plaintiffs to seek additional administrative  
12 hearings would not serve the policies behind the IDEA's exhaustion  
13 requirement. While a complete factual record would greatly  
14 facilitate this court's review, further administrative proceedings  
15 would not likely produce a meaningful basis for that review.

16 Because plaintiff has pled a denial of FAPE in violation  
17 of the IDEA and because further exhaustion of the administrative  
18 remedies set forth in 20 USC § 1415 would be futile, the court has  
19 federal question jurisdiction over plaintiffs' IDEA claim pursuant  
20 to 28 USC § 1331. Accordingly, defendants motion to dismiss  
21 plaintiffs' first cause of action is DENIED.

22  
23 III

24 Plaintiffs' remaining causes of action are all, in some  
25 way, predicated upon plaintiffs' first claim – that defendants  
26 violated the "intent and purpose of the IDEA" when they denied  
27 Michael a FAPE for the 2003-2004 school year. See Doc #10 at ¶¶  
28 43-48. Because the court has concluded that it possesses subject

1 matter jurisdiction over plaintiffs' IDEA claim, it may also  
2 exercise jurisdiction over plaintiffs' remaining claims (Doc #10,  
3 ¶¶ 49-79) pursuant to 28 USC §§ 1331 and 1367.

4         The court may exercise federal question jurisdiction over  
5 claims two (violation of 42 USC § 1983 for violation of IDEA, 20  
6 USC §§ 1400, et seq), three (violation of § 504 of the  
7 Rehabilitation Act of 1973, 20 USC § 794), four (violation of 42  
8 USC § 1983 for violation of § 504 of the Rehabilitation Act) and  
9 five (violation of 42 USC § 1983 for violation of the due process  
10 clause of the Fourteenth Amendment to the United States  
11 Constitution) because each claim arises under "the Constitution,  
12 laws, or treaties of the United States." 20 USC § 1331; see also  
13 Doc #10 at ¶¶ 49-74. Additionally, the court may exercise  
14 supplemental jurisdiction over plaintiffs' sixth cause of action  
15 for breach of contract (Doc #10, ¶¶ 75-79) because this claim is so  
16 related to defendants' alleged violation of the IDEA that it forms  
17 part of the same case or controversy. 28 USC § 1367.

18  
19 IV

20         Having addressed jurisdiction, it is now proper to  
21 address defendants' alternative theory of dismissal. Pursuant to  
22 Rule 12(b)(6), defendants argue that plaintiffs have failed to  
23 state a claim upon which relief can be granted for claims one, two  
24 and four. Doc #23, 6:14-9:6, 14:21-19:3; Doc #30, 12:20-13:10.

25         A Rule 12(b)(6) motion will be granted "only where there  
26 is either a 'lack of a cognizable legal theory' or 'the absence of  
27 sufficient facts alleged under a cognizable legal theory.'"   
28 Schwarzer, Tashima & Wagstaffe, Federal Civil Procedure Before

1 Trial, Chapter 9:187 (Rutter Group, 2006); Balistreri v Pacifica  
2 Police Department, 901 F2d 696, 699 (9th Cir 1990). "In resolving  
3 a Rule 12(b)(6) motion, the court must (1) construe the complaint  
4 in the light most favorable to the plaintiff; (2) accept all well-  
5 pleaded factual allegations as true; and (3) determine whether  
6 plaintiff can prove any set of facts to support a claim that would  
7 merit relief." Id; Cahill v Liberty Mutual Ins Co, 80 F3d 336,  
8 337-38 (9th Cir 1996).

9           Local and state defendants argue that plaintiffs' first  
10 (violation of IDEA) and fourth (violation of section 1983  
11 predicated upon section 504 of the Rehabilitation Act) causes of  
12 action are deficient. Doc #23, 6:14-9:6, 18:7-19:3; Doc #30,  
13 12:20-13:10. In addition, local defendants argue that plaintiffs'  
14 second cause of action (violation of section 1983 predicated upon  
15 the IDEA) fails to state a claim. Doc #23, 14:21-17:10.

16  
17           A

18           Plaintiffs first claim for relief under the IDEA is not  
19 deficient. Under Rule 12(b)(6), all material facts pled in  
20 plaintiffs complaint are taken as true. As discussed above,  
21 plaintiffs' complaint sufficiently alleges defendants' breach of  
22 the IDEA. Accordingly, defendants' motion to dismiss plaintiffs'  
23 first cause of action (Doc #10, ¶¶43-48) is DENIED.

24  
25           B

26           Local defendants argue that both of plaintiffs' § 1983  
27 causes of action fail to state a claim upon which relief can be  
28 granted under Rule 12(b)(6). Doc #23, 14:21-19:3. State

1 defendants join in the motion as to claim number four - plaintiffs'  
2 § 1983 action predicated upon § 504 of the Rehabilitation Act. Doc  
3 #30, 12:20-13:10. Although § 1983 allows individuals to enforce  
4 rights conferred by federal laws, "[a]n alleged violation of  
5 federal law may not be vindicated under § 1983 \* \* \* where \* \* \*  
6 Congress has foreclosed citizen enforcement in the enactment  
7 itself, either explicitly, or implicitly by imbuing it with its own  
8 comprehensive remedial scheme." Vinson v Thomas, 288 F3d 1145,  
9 1155 (9th Cir 2002).

10 Defendants point out, and plaintiffs do not dispute, that  
11 § 504 of the Rehabilitation Act contains a comprehensive  
12 enforcement scheme that "foreclose[s] resort to the more general  
13 enforcement provisions of section 1983." Id at 156 (internal  
14 quotations omitted); Doc #23, 18:7-19:3; Doc #30, 12:20-13:10.  
15 Accordingly, plaintiffs' fourth cause of action for relief under §  
16 1983 predicated on a violation of § 504 of the Rehabilitation Act  
17 is DISMISSED with prejudice.

18 Plaintiffs', however, do argue that § 1983 actions can be  
19 predicated upon violations of the IDEA. Doc #39, 16:1-19:9.  
20 Defendants contend that the Supreme Court's holding in Smith v  
21 Robinson, 468 US 992 (1984), specifically classifies the IDEA as a  
22 federal statute with a comprehensive enforcement scheme, thus  
23 precluding § 1983 liability. Doc #23, 15:7-14.

24 Plaintiffs' argument is based on Congress' 1986 amendment  
25 to the IDEA, 20 USC § 1415 the current version of which states, in  
26 pertinent part:

27 Nothing in this chapter shall be construed to  
28 restrict or limit the rights, procedures, and  
remedies available under the Constitution,  
the Americans with Disabilities Act of 1990



[42 U.S.C.A. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C.A. § 791 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

20 USC § 1415(1). Plaintiffs argue that, with this amendment, Congress specifically authorized § 1983 actions predicated on the IDEA. Doc #39 at 16-19. This court, however, is not persuaded by plaintiffs' argument.

As defendants point out, "section 1983 is not among the statutes specifically named by Congress in § 1415(1) [nor] is it a statute 'protecting the rights of children with disabilities.'" Alex G v Bd of Trustees, 332 F Supp 2d 1315, 1317 (ED Cal 2004). Furthermore, although the Ninth Circuit has not specifically addressed whether § 1983 liability for violations of the IDEA is precluded, several sister circuits have found that the IDEA's comprehensive enforcement scheme, even in light of § 1415(1), precludes § 1983 liability predicated upon the IDEA. Padilla v School Dist No 1, 233 F3d 1268, 1272-74 (10th Cir 2000); Sellers by Sellers v School Bd, 141 F3d 524, 529-30 (4th Cir 1998); Diaz-Fonseca v Puerto Rico, 451 F3d 13, 28-29 (1st Cir 2006).

In the absence of Ninth Circuit precedent, this court adopts the Tenth, Fourth and First Circuits' interpretation and finds that the IDEA's comprehensive enforcement scheme precludes relief under section 1983. Accordingly, plaintiffs' second claim for relief is DISMISSED with prejudice.

V

Local defendants move to dismiss each of plaintiffs' claims against the individual defendants in their official capacities arguing that it is duplicative and unnecessary because "[a] suit against a government official in her 'official capacity' is, in practice, the same as a suit against the public entity for which the officer is an agent." Doc #23, 17:14-15. Local defendants proffer a similar argument for plaintiffs' claims against the AUSD board urging that a "finding of liability against the [b]oard is simply a redundant finding of liability against the [d]istrict." Doc #23, 17:26-27.

These arguments are misplaced. It is well settled that an injured party may obtain prospective injunctive relief against individual defendants in their official capacities. Ex parte Young, 209 US 123, 159-60 (1908); Natural Resources Defense Council v California DOT, 96 F3d 420, 422 (9th Cir 1996). While it may be inappropriate for individuals to be held liable for damages for acts carried out in their official capacity, plaintiffs may still seek prospective injunctive relief from the individual defendants in their official capacities, and it would be inappropriate to dismiss them as defendants.

With respect to the AUSD board, it is not clear whether the defendants seek to have all causes of action, or only plaintiffs' third and fourth causes of action, against the board dismissed. In any event, the defendants have not sufficiently articulated the relationship between the board and the AUSD for this court to say with certainty that the board itself should be dismissed. Because defendants' only argument is that the parties

1 are "duplicative," the court concludes that defendants can suffer  
2 no prejudice from keeping the board as a named defendant, and the  
3 court declines to dismiss the board.

4 Accordingly, local defendants' motion to dismiss the  
5 individual defendants and the board on the grounds that plaintiffs'  
6 claims are duplicative and unnecessary is DENIED.

7  
8 VI

9 Defendants concede that, under the IDEA, plaintiffs could  
10 obtain compensatory education, injunctive relief, attorney's fees  
11 and costs and reimbursement for expenses related to Michael's  
12 education. Doc #23, 19:25-20:3; Doc #30, 13:15-18. Defendants  
13 argue, however, that beyond the above enumerated "equitable"  
14 relief, plaintiffs cannot recover "monetary damages" under the  
15 IDEA, i e, compensatory awards for emotional and physical harm, and  
16 punitive awards. Doc #23, 20:15-18; Doc #30, 13:18-21. Defendants  
17 further assert that plaintiffs cannot recover punitive damages  
18 under § 504 of the Rehabilitation Act. Doc #23, 20:25-8; Doc #30,  
19 14:24-15:1.

20 Despite disagreement among the circuits, this court is  
21 persuaded that, in the Ninth Circuit, monetary damages are not  
22 available as a remedy under the IDEA. Primarily, plaintiffs argue  
23 that the line of Ninth Circuit cases holding that monetary damages  
24 are not available under the IDEA rests on the erroneous presumption  
25 that a statute conferring such a remedy must be accompanied by  
26 explicit congressional intent to do so. See Mountain View-Los  
27 Altos Union High Sch Dist v Sharron BH, 709 F2d 28, 30 (9th Cir  
28 1983). The Ninth Circuit's rationale, according to plaintiffs, is

1 erroneous in light of the Supreme Court's holding in Franklin v  
2 Gwinnett County Pub Sch Dist, that "absent clear direction to the  
3 contrary by Congress," there is a presumption of availability of  
4 all appropriate remedies. 503 US 60, 73 (1992) (finding a right to  
5 monetary damages under Title IX of the Education Amendments of 1972  
6 (20 USC §§ 1681-88)). Plaintiffs accordingly assert that 20 USC §  
7 1415(i)(2)(c)(iii), which states that a district court may "grant  
8 such relief as the court determines appropriate" in an IDEA case,  
9 must be construed broadly in favor of the availability of monetary  
10 damages. Doc #39, 21:3-6. Plaintiffs' argument goes too far.

11 First, although the Ninth Circuit has not explicitly  
12 addressed Franklin's effect on the denial of monetary damages under  
13 the IDEA, since that decision, the court has reaffirmed that  
14 monetary damages are not available. See Robb v Bethel Sch Dist  
15 403, 308 F3d 1047 (9th Cir 2002); Witte v Clark County Sch Dist,  
16 197 F3d 1271, 1275 (9th Cir 1999).

17 Second, the Supreme Court clarified Franklin in Gebser v  
18 Lago Vista Indep Sch Dist, holding that the general presumption of  
19 available remedies "'yields where necessary to carry out the intent  
20 of Congress or to avoid frustrating the purposes of the statute  
21 involved.'" 524 US 274, 285 (1998) (citing Guardians Assn v Civ  
22 Serv Comm of New York City, 463 US 582, 595 (1983)). The Supreme  
23 Court has specifically addressed the purpose of the IDEA in light  
24 of the statute's authorization for courts to order all "appropriate  
25 relief." In School Comm of the Town of Burlington v Dept of Educ  
26 Mass, 471 US 359, 368-69 (1985), the Supreme Court specifically  
27 interpreted the meaning of "appropriate relief" under the IDEA's  
28 preceding statute finding that relief must be appropriate in light

1 of the purpose of the act, which is to provide disabled students  
2 with a free appropriate public education. Thus, the Court found  
3 that parents can be reimbursed for educational services a school  
4 district illegally refuses to provide, but noted that such  
5 reimbursements are not considered "damages." Id at 370.  
6 Plaintiffs have not explained how monetary damages unrelated to  
7 Michael's education would serve to provide him with a "free  
8 appropriate public education." Furthermore, compensatory and  
9 punitive damages would frustrate the limited purposes of the act by  
10 essentially converting it into a tort claim against educational  
11 agencies.

12 Accordingly, this court is persuaded by other circuits,  
13 which hold that the complicated administrative scheme created by  
14 the IDEA demonstrates that Congress did not intend to provide  
15 federal court claimants with all available remedies. See Sellers  
16 by Sellers v Sch Bd, 141 F3d 524, 527 n3 (4th Cir 1998); Diaz-  
17 Fonseca v Puerto Rico, 451 F3d 13, 28-29 (1st Cir 2006); Polera v  
18 Bd of Educ, 288 F3d 478, 486 (2d Cir 2002). Indeed, it would make  
19 little sense to provide a comprehensive administrative scheme for  
20 the limited purpose of ensuring a "free appropriate public  
21 education," only to permit virtually unlimited liability on review  
22 in the district court. Thus, plaintiffs' claims for monetary  
23 damages under their IDEA cause of action (claim #1) are DISMISSED.  
24 Plaintiffs, however, may still obtain reimbursement for educational  
25 expenses, compensatory education, injunctive relief and attorneys  
26 fees and costs under their IDEA claim.

27 Defendants also urge the court to dismiss plaintiffs'  
28 claims for punitive damages sought under the Rehabilitation Act

1 since "parties cannot collect punitive damages based on violations  
2 of [s]ection 504 of the Rehabilitation Act." Doc #23, 20:25-8; Doc  
3 #30, 14:24-15:1; Barnes v Gorsman, 536 US 181, 189-190 (2002).  
4 Plaintiffs do not dispute this. Accordingly, plaintiffs' prayer  
5 for punitive damages under the Rehabilitation Act is DISMISSED.

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7 VII

8 For the above stated reasons, plaintiffs' § 1983 claims  
9 predicated on a violation of the IDEA (claim #2) and on a violation  
10 of section 504 of the Rehabilitation Act (claim #4) are DISMISSED  
11 with prejudice.

12 Defendants' motions to dismiss plaintiffs' first, third,  
13 fifth, and sixth causes of action are DENIED.

14 Local defendants' motion to dismiss individuals acting in  
15 their official capacities and the AUSD board is DENIED.

16 Plaintiffs' claim for compensatory and punitive damages  
17 under the IDEA is DISMISSED with prejudice. Plaintiffs' claim for  
18 punitive damages under section 504 of the Rehabilitation Act is  
19 also DISMISSED with prejudice.

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21 The court is in receipt of plaintiffs' March 12, 2007  
22 letter concerning: confusion over a July 25, 2006 minute order  
23 directing plaintiffs to amend their complaint by September 2006  
24 (Doc #57); confusion over the status of mediation; and access to  
25 the case file.

26 The order directing plaintiffs to amend their complaint  
27 can be disregarded. The court's recollection is that, at the July  
28 2006 case management conference, the parties discussed the

1 possibility of amending the complaint depending on the outcome of  
2 the motions to dismiss. In light of the above ruling on these  
3 motions, the court finds that amending the complaint is  
4 unnecessary.

5 The parties shall appear for a case management conference  
6 on May 8, 2007, at 9:00 am.

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9 IT IS SO ORDERED.

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13 VAUGHN R WALKER  
14 United States District Judge  
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